

Mental Health Act 2016

Chief Psychiatrist Policy

Searches and security**Contents**

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General

The [Mental Health Act 2016](#) (the Act) provides a framework for ensuring the safety and security of patients and others within an authorised mental health service (AMHS) or public sector health service facility (PSHSF).

This framework includes the authorisation of searches, mail procedures and processes relating to the exclusion of visitors.

Searches under the Act may be authorised under specific circumstances for patients and their belongings, as well as for visitors and visitors' belongings.

Scope

This Policy is mandatory for all Authorised Mental Health Services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the Act **must** comply with this Policy.

Clinicians should work collaboratively with and in partnership with patients to ensure their unique age-related, cultural and spiritual, gender-related, religious and communication needs are recognised, respected and followed to the greatest extent practicable. Clinicians should consider the timely involvement of appropriate local supports and provide treatment and care with a recovery-oriented focus.

This policy **must** be implemented in a way that is consistent with the objects and principles of the Act.

This Policy does not preclude other lawful searches and seizures authorised under another law or in accordance with local policy and procedure.

Policy

1 Application of search provisions

Key Points

The Act provides that searches may be authorised for the following:

- particular persons detained in a PSHSF
- particular patients of an AMHS, in any part of the AMHS (e.g. inclusive of emergency departments)
- an involuntary patient on admission or entry to a high security unit or an approved AMHS
- visitors entering a high security unit or an approved AMHS
- posted items received at an AMHS for:
 - an involuntary patient, or
 - a voluntary patient receiving treatment in the AMHS.

1.1 Types of Searches

1.1.1 General Search

A general search means a search of a person:

- to reveal the content of the person's outer clothing or hand luggage without touching the person or the luggage, or
- in which the person may be required to open their hands or mouth for a visual inspection, and also to shake his or her hair vigorously.

1.1.2 Personal search

Key Points

A personal search means a search in which light pressure is momentarily applied to the person over the person's general clothes without direct contact being made with the person's genital or anal areas (including breast for persons identifying as female).

- A personal search may include any or all of the following:
 - removing and inspecting an outer garment or footwear of the person,
 - removing and inspecting all things from the pockets of the person's clothing,
 - touching the clothing worn by the person only to the extent necessary to detect things in the person's possession, and
 - removing and inspecting any item found.

A personal search **must** be carried out in a way that respects the dignity of the person being searched and causes as little inconvenience to that person as possible in the circumstances.

The searcher may conduct a personal search only if:

- the searcher is the same gender as the person, and
- the search is carried out in a part of a building that ensures the person's privacy.

1.1.3 Postal article search

An AMHS administrator, or an appropriately qualified person authorised by the administrator, may open or search anything received at the AMHS for a patient. For example, a letter, parcel package or other item carried by a courier service.

A posted article search may include the use of electronic scanning device or physical examination, including for example opening the article.

1.1.4 Scanning search

A scanning search means a search of the person by electronic or other means that does not require the person to remove their clothes or to be touched by another person.

A scanning search may be achieved by, for example, the use of a hand-held scanning device that passes over the person's body, or by requiring the person to walk through a scanning device.

1.1.5 Search of possessions

A person authorised to carry out a search of a person's possessions (e.g. a health practitioner, doctor or authorised security officer) may:

- open or inspect a thing in the person's possessions, and
- remove or inspect any detected thing.

A search of possessions may only occur if the owner of the possession is present or has been given the opportunity to be present.

1.1.6 Search requiring the removal of clothing

Key Points

A search requiring the removal of clothing means a search in which the person removes all clothing during the course of the search; however no direct physical contact is made with the person.

A search requiring the removal of clothing can only be authorised with the approval of the AMHS administrator (or their delegate).

If the search is occurring outside of a high security unit or an approved AMHS, the person in charge of the PSHSF may also give approval for a search requiring the removal of clothing.

- The administrator or person in charge can only approve this type of search if they believe the removal of clothing is necessary in the circumstances.

A search requiring removal of clothing **must** be carried out by at least two of the following persons who are authorised to conduct this type of search:

- a health practitioner,
- doctor, or
- in high secure or approved units, an authorised security officer.

There **must** be no more people involved in the search than is necessary to carry out the search.

Each person carrying out the search **must** be the same gender as the person being searched.

Before searching, one of the searchers **must** explain to the person:

- that the person will be required to remove the person's clothing during the search, and
- the reasons why it is necessary to remove the clothing.

The searcher **must**:

- ensure the search is carried out in a part of a building that ensures the person's privacy

- ensure the way in which the person is searched causes minimal embarrassment to the person
 - take reasonable care to protect the person’s dignity
 - carry out the search as quickly as practical, and
 - allow the person to get dressed as soon as the search is finished.

The searcher **must**, if reasonably practicable, give the person the opportunity to remain partly clothed during the search, including, for example, by allowing the person to keep their clothing on their upper body before being required to remove clothing from the lower part of the body, and vice versa.

If the searcher seizes clothing as a result of the search, the searcher **must** ensure that the person is left with, or given, reasonably appropriate clothing.

Authorisation for a search requiring the removal of clothing is limited to removing clothes for the purpose of searching only; it does not extend to other circumstances where clothing may need to be removed (e.g. emergency clinical situations).

2 Postal articles

Key Points

The postal article search provisions apply to:

- involuntary patients, and
- a person receiving treatment and care for a mental illness in an AMHS, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

Patients in an AMHS have the same rights as any other person in the community to send and receive postal articles.

It is an offence under the Act to prevent or impede the delivery or sending of *postal articles* to and from an AMHS.

These provisions do not apply if the addressee of the *postal article*:

- is the subject of a non-contact order, or
- has given written notice to the relevant AMHS Administrator requesting that postal articles sent by the patient to the addressee be withheld.

The administrator, or an appropriately qualified person authorised by the administrator, may open or conduct a postal article search on anything received at the AMHS, for a patient.

- The administrator may only open or search the article if the patient is present or if the patient has been given an opportunity to be present.
 - This does not apply if the patient obstructs the administrator’s ability to search the article.

2.1 Seizure of postal articles

An administrator or appropriately qualified person authorised by the administrator, may seize an item if, on opening or examining the article, they reasonably suspect an item is:

- connected with, or is evidence of, the commission or intended commission of an offence, or
- a harmful thing¹.

Section 8 of this policy outlines processes associated with the seizure of an item.

3 Searches of patients in an AMHS or PSHSF

Key Points

An involuntary patient or a classified patient (voluntary) may be searched in an AMHS or PSHSF (in any part of the AMHS or PSHSF, e.g. including an emergency department) if a doctor or health practitioner believes the patient may have something harmful in their possession.

- The doctor or health practitioner may carry out a general search, scanning search, or personal search of the patient without the patient's consent.
- The doctor or health practitioner may also search the patient's possessions.

If the relevant AMHS administrator or person in charge of a PSHSF gives approval for a search requiring the removal of clothing, the doctor or health practitioner may carry out the search.

Non-consensual searches represent a significant personal intrusion. A search of a patient or their possessions should, as far as possible, occur with the patient's consent.

The authority to search should only be considered if it is not possible to obtain consent and the individual circumstances warrant a non-consensual search.

Before carrying out a search, the doctor or health practitioner **must** tell the patient and their support person/s the reasons for the search and how it is to be carried out. Reasonable steps **must** be taken to ensure the patient understands the information. This may include, use of an interpreter or other methods of communication, such as sign language, written explanations or explanation with assistance from a support person.

¹ Harmful thing means anything that may be used to threaten the security or good order of an AMHS or PSHSF; or threaten a person's health or safety; or that, if used by a patient in an AMHS or PSHSF is likely to adversely affect the patient's treatment or care. (E.g. a dangerous drug, alcohol, medication, provocative or offensive documents).

A search under this authority may be undertaken at any time (e.g. on or during admission to a unit or on return from limited community treatment) provided the doctor or health practitioner has a belief that the patient has a harmful thing.

In considering the need to authorise a search for a harmful thing, the doctor or health practitioner should have regard to the individual circumstances of the case. Relevant factors will vary with individual circumstances but may include:

- if the patient has not consented to a search, the reason for any objection
- the patient's history
- any collateral information, and
- the environment, including items that might constitute a harmful thing in that environment.

The doctor or health practitioner **must** document their decision and the reasons for it, including any relevant factors taken into account, in the patient's records on CIMHA.

A doctor or health practitioner may carry out a search under this section with the help (including the assistance of security officers), and using the force, that is necessary and reasonable in the circumstances.

3.1 Searches of involuntary patients on admission or entry to a high security unit or approved service

Key Points

An involuntary patient of a high security unit, or an approved service, may be searched on admission or entry to the unit or service.

- Entry to a unit may include entry to a particular room (such as a seclusion room) or part of the service.

A search on admission or entry can occur in a routine manner without the searcher requiring a belief that the person has a harmful thing.

An authorised security officer may carry out a general search, scanning search, or personal search of the patient without the patient's consent. The officer may also search the patient's possessions.

If the relevant AMHS administrator gives approval for a search requiring the removal of clothing, the authorised security officer may carry out the search.

Non-consensual searches represent a significant personal intrusion. A search of a patient or their possessions should, as far as possible, occur with the patient's consent.

The authority to search should only be considered if it is not possible to obtain consent and the individual circumstances warrant a non-consensual search.

Before carrying out a search, the authorised security officer **must** tell the patient and their support person/s the reasons for the search and how it is to be carried out. Reasonable steps **must** be taken to ensure the patient understands the information. This may include, use of an interpreter or other methods of communication, such as sign language, written explanations or explanation with assistance from a support person.

A search under this section may be carried out with the help, and using the force, that is necessary and reasonable in the circumstances.

3.2 Seizure of items

An item may be seized by a searcher undertaking a search of a patient if they reasonably suspect an item is:

- connected with, or is evidence of, the commission or intended commission of an offence, or
- a harmful thing.

Section 8 of this policy outlines processes associated with the seizure of an item.

4 Searches of visitors to a high security unit or approved service

Key Points

A visitor to a high security unit, or an approved service, may be asked by an authorised security officer to consent to a:

- general search, scanning search, or personal search, or
- search of the visitor's possessions.

The authorised security officer **must**:

- tell the visitor the officer's powers in relation to the search,
- how the search will be carried out, and
- the visitor's rights in relation to the search.

If the visitor does not provide consent to the search, the authorised security officer may refuse the visitor permission to enter the service.

- If the visitor has already entered the service, the authorised security officer may direct them to leave. A visitor **must** comply with this direction.

A visitor may ask a search to be stopped at any time if the visitor is prepared to leave the service immediately.

- An authorised security officer **must** comply with this request and the visitor will be required to leave the service immediately.

If an authorised security officer believes a possession of the visitor is a harmful thing, they may request that it be left with the officer until the visitor leaves the service.

- If the visitor does not comply with this request, the authorised security officer may refuse the visitor entry to the service.
- If the visitor has already entered the service, the authorised security officer may direct them to leave. A visitor **must** comply with this direction.

A visitor may also leave their possessions with the authorised security officer for the duration that they are visiting the service.

If a visitor's possession was left with an authorised security officer, the officer **must** ensure the item is returned if the visitor requests that it be returned, and the officer is satisfied the visitor is about to leave the service.

An authorised security officer may seize anything found during the search of a visitor if the officer reasonably suspects the item is connected with, or is evidence of, the commission or intended commission of an offence.

5 Records of searches

A record **must** be kept for:

- a search requiring the removal of clothing, and
- any item seized during a search.

As soon as practicable after carrying out the search, the searcher **must** make a written record of the search, including:

- the reasons for the search
- the names of the people present during the search
- how the search was carried out
- details of any items seized during the search and the condition of the item,
- the reasons for seizing these items, and
- what actions were taken in relation to the item (e.g. stored, provided to police, disposed etc.).

A copy of the record **must** also be uploaded to CIMHA.

6 Seizure of items during a search

6.1 Harmful things

Key Points

If a searcher believes that an item seized from a patient is a harmful thing, the searcher **must**:

- keep it for the patient and return it to the patient when they are discharged from the AMHS or PSHSF,
- give it to someone else if the patient is able to, and has provided, their agreement, or
- give or send the item to another person if the *searcher* is satisfied that someone else is entitled to possession of the thing.

If the searcher is satisfied that the item is of negligible value, the searcher may dispose of it in the way in which the administrator or the person in charge deems appropriate.

Value judgements in relation to an item should not be limited to monetary value, and if practicable consultation with the patient on the item's value to them should be undertaken prior to any item being disposed of.

6.2 Items related to committing an offence

If the searcher believes an item that has been seized is connected with, or evidence of, committing an offence against an Act, the searcher **must** give it to an authorised inspector under that Act.

- An authorised inspector is a person authorised under an Act to perform inspection and enforcement functions for that Act (e.g. Police officers).

If the authorised inspector agrees that the item is evidence of an offence or intent to commit an offence, then the authorised inspector **must** deal with it in accordance with the relevant Act under which the inspector is appointed.

If the authorised inspector does not consider the item is evidence of an offence or intent to commit an offence, the inspector **must** return it to the searcher who should deal with it as if it was a harmful thing or a visitor's seized item.

6.3 Forfeiture of visitor's items

An item seized from a visitor is forfeited if the searcher:

- cannot find the visitor after making reasonable inquiries, or
- cannot return it to the visitor after making reasonable efforts.

Reasonable attempts to contact a visitor or to return an item to a visitor are not required if it would be unreasonable in particular circumstances to make inquiries or return the item (e.g. there is a safety concern in relation to making contact or returning an item to a visitor).

The nature and extent of inquiries and efforts to return an item should be determined with regard to the nature of the item, its condition and overall value.

6.4 Receipt for seized items

If an item is seized during a search, the searcher **must** give the person from whom the item was seized a receipt for the item. The receipt should briefly describe the item seized and its condition.

A receipt is not required to be given for a seized item that is given to another person (e.g. the patient has agreed that the item can be given to another person or the seized item belongs to another person). However, there should be clear documentation of the patient's decision to have the item go to another person.

6.5 Access to seized thing

If an item has been seized, the searcher **must** allow the owner of the item to inspect it and, if it is a document, to copy it, until the item is forfeited or returned.

This does not apply if it would be impracticable or unreasonable to allow access to the item or for the document to be copied.

7 Compensation for damage to belongings

A patient or visitor may claim compensation for the cost of repairing or replacing their possessions if they are damaged in the processes of a search or seizure.

A court may order an amount be paid only if it is fair to make the order in the circumstances.

8 Authorised security officers – only for high security units

Key Points

When considering authorising a security officer or employee as an authorised security officer, the AMHS administrator should take account of:

- the type of searches that are to be conducted (i.e. different skills may be required depending on whether it is intended the person be permitted to conduct a search of belonging or a search of the person)
- the person's experience and expertise in mental health service provision and the level of supervision required, and
- the type/level of training that the person has undertaken or requires to conduct searches.

An authorised security officer for a high security unit or an approved service **must** carry an identity card approved by the administrator which identifies the person as an authorised security officer.

In authorising the officer or employee, the administrator should limit the person's powers as appropriate in the circumstances (e.g. the instrument of authorisation should specify if the person is authorised to only conduct general searches).

9 Exclusion of visitors

Key Points

An AMHS administrator may refuse entry to a visitor, if there is concern that the visit will adversely affect that patient's treatment and care.

- This concern may include concern that the patient's mental state may deteriorate based on previous deterioration that occurred during or after the last visit from that visitor.

The administrator **must** give the person written notice of the decision. A template letter is available in CIMHA for this purpose. The notice **must** state:

- the reasons for the decision, and
- the process for the person to appeal against that decision to the Mental Health Review Tribunal (MHRT) within twenty-eight (28) days of receiving the notice.

Where appropriate, the written notice should also specify the duration of the exclusion (i.e. a start and end date). The decision to exclude a visitor should be reviewed at regular intervals.

Consultation on the content of the letter with local legal services is strongly encouraged.

The administrator cannot exclude:

- a patient's legal representative
- a health practitioner whose visit has been requested by the patient, or
- a person performing a function under another Act (for example a community visitor under the *Public Guardian Act 2014*, or a police officer).

9.1 Appeals against decision of an AMHS administrator

If the person who is refused entry by an administrator is dissatisfied with this decision, the person may apply against the decision to the MHRT.

The person **must** give notice of appeal to the MHRT within **twenty-eight (28) days** of receiving the decision of the administrator. This notice is available at www.mhrt.qld.gov.au.

The MHRT **must**:

- give notice of the appeal to the relevant administrator within **seven (7) days** after the appeal is started, and
- give **seven (7) days'** notice of the hearing to the parties to the appeal.

In deciding an appeal, the MHRT may confirm or set aside the decision of the administrator to refuse entry to the visitor.

Issued under section 305 of the *Mental Health Act 2016*.

Dr John Reilly

Chief Psychiatrist, Queensland Health

22 May 2020

Definitions and abbreviations

Term	Definition
AMHS	Authorised mental health service – a health service, or part of a health service, declared by the Chief Psychiatrist to be an authorised mental health service. AMHSs include both public and private sector health services. While treatment and care is provided to both voluntary and involuntary patients, additional regulation applies under the Act for persons subject to involuntary treatment and care.
Authorised security officer	Means a security officer, or an appropriately qualified employee of an AMHS who is authorised by the administrator of the AMHS to provide security services to the AMHS.
Authorised inspector	Means a person who is authorised under an Act to perform inspection and enforcement functions (e.g. a police officer).
Approved service	Means an AMHS, or part of an AMHS, which has been approved by the Chief Psychiatrist for the purpose of searching on entry or admission.
CIMHA	Consumer Integrated Mental Health Application – the statewide mental health database which is the designated patient record for the purposes of the Act.
Harmful thing	<p>Means any item that may be used to:</p> <ul style="list-style-type: none"> • threaten the security or good order of an AMHS or public sector health service facility • threaten a person’s health or safety, or • if used by a patient in an AMHS or public sector health service may adversely affect the patient’s treatment or care. <p>Examples of harmful things are a dangerous drug, alcohol, medication, weapon or provocative or offensive documents.</p>
Health practitioner	Means a person registered under the Health Practitioner Regulation National Law; or another person who provides health services, including, for example a social worker. For the purpose of clarity, a person registered includes a nurse, psychologist or occupational therapist.

Term	Definition
Involuntary patient	<p>Means:</p> <ul style="list-style-type: none"> • a person subject to any of the following: <ul style="list-style-type: none"> – an examination authority – a recommendation for assessment – a treatment authority – a forensic order – a treatment support order – a judicial order, or • a person detained in an AMHS for up to an hour to enable a recommendation for assessment to be made, or • a person absent without permission from another State detained in an AMHS.
Non-contact condition	Is a condition of a forensic order or treatment support order that prevents contact with a stated person.
Postal article	Includes a postal article carried by a courier service.
Searcher	Means a person authorised to conduct a personal search under the Act.
Security officer	Means a person employed or engaged by an AMHS to provide security services.
Support person	For explaining to a patient, the reasons for search, support person means a nominated support person or, if the person does not have a nominated support person, a family member, carer or other support person.
The Act	<i>Mental Health Act 2016</i>

Referenced Documents and Policies

[Public Guardian Act 2014](#)

Document Status Summary

Date of Chief Psychiatrist approval: 22 May 2020

Date of effect: 1 June 2020

Supersedes version that took effect on: 22 April 2020



Document Status Summary

To be reviewed by:

1 June 2023